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10/538,360	06/13/2005	Paul Alfred Cornwell	J3704(C)	6009
201 7590 08/03/2009 UNILEVER PATENT GROUP 800 SYLVAN AVENUE AG West S. Wing ENGLEWOOD CLIFFS, NJ 07632-3100			EXAMINER WEDDINGTON, KEVIN E	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

Claims 1, 2, 4 and 6-15 are presented for examination.

Applicants' amendment after-final and response filed July 16, 2009 have been received and entered.

Claims 9-12 are withdrawn from consideration as being drawn to the non-elected invention (37 CFR 1.142(b)).

### ***Claim Objections***

Claim 2 is objected to.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is again provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 11/547,576; over claim 1 of copending Application No. 11/547,577; and over claim 1 of copending Application No. 12/086,091. Although the conflicting claims

are not identical, they are not patentably distinct from each other because the only differences between the present claim and the copending claims lie in the present claim, an additional agent is administered with the disaccharide and di-acid.

The present claim would anticipate the copending claims because the copending claims recite the term "comprising" and thus opens the claims to the inclusion of additional active agent(s).

Claim 1 is not allowed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 4, 6-8 and 13-15 are again rejected under 35 U.S.C. 103(a) as being unpatentable over JP 61-238894 A of PTO-1449, hereby known as Sunstar KK in view of WO 97/14401 A1, hereby known as Nakajima et al., all of record, for reasons, of record as set forth in the previous Office action dated April 16, 2009 at pages 3-5 as applied to claims 1-4, 6-8 and 13-15.

Applicants' remarks regarding the prior art does not teach the applicants' instant hair composition wherein the selected disaccharide is trehalose (as set forth in applicants' data on page 4 of response) are not persuasive since applicants' claim 1 does not recite this **"critical limitation"** that the hair compositions, Examples 1 and 2, prefers trehalose (a disaccharide) only which shows unexpected results.

Applicants' claim 1 (broad) still reads on the prior art of use a composition comprising a disaccharide, a di-acid (see Sunstar KK) and the combination of the secondary reference.

Again, applicants' claims fail to patentably exclude such other agent(s) since therein applicants recite the term "comprising".

The rejection made under 35 USC 103(a) is adhered to.

Art Unit: 1614

Claims 1, 4, 6-8 and 13-15 are not allowed.

/KEVIN WEDDINGTON/

Primary Examiner, Art Unit 1614